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APPLICATION NO.	Fi	ILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/084,250 02/28/2002		02/28/2002	Paul D. Rubin	4821-469	4257
20582	7590	02/24/2003			
PENNIE & 1		NDS LLP	EXAMINER		
1667 K STREET NW SUITE 1000				HAGHIGHATIAN, MINA	
WASHINGTON, DC 20006				ART UNIT	PAPER NUMBER
			1616		
•				DATE MAILED: 02/24/2003	

Please find below and/or attached an Office communication concerning this application or proceeding.

	A 11 11 11						
<u>c</u>	Application No.	Applicant(s)					
Office Action Summany	10/084,250	RUBIN, PAUL D.					
Office Action Summary	Examiner	Art Unit					
The MAII INC DATE of this communication con	Mina Haghighatian	1616					
The MAILING DATE of this communication appears on the cover sheet with the correspondence address Period for Reply							
A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.  - Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).  - Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).  Status							
1) Responsive to communication(s) filed on 13 L	<u> December 2002</u> .						
2a)☐ This action is <b>FINAL</b> . 2b)⊠ Thi	is action is non-final.						
3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.							
Disposition of Claims							
4) Claim(s) 7-49 is/are pending in the application.							
4a) Of the above claim(s) 7-11,17-29 and 42-49 is/are withdrawn from consideration.							
5) Claim(s) is/are allowed.							
7) Claim(s) <u>12-10 and 30-41</u> is/are rejected.	6) Claim(s) 12-16 and 30-41 is/are rejected.						
· - · · · · · · · · · · · · · · · · · ·	r election requirement						
8) Claim(s) are subject to restriction and/or election requirement.  Application Papers							
9) The specification is objected to by the Examiner.							
10)☐ The drawing(s) filed on is/are: a)☐ accepted or b)☐ objected to by the Examiner.							
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).							
11) The proposed drawing correction filed on	is: a)□ approved b)□ disappr	oved by the Examiner.					
If approved, corrected drawings are required in reply to this Office action.							
12) The oath or declaration is objected to by the Examiner.							
Priority under 35 U.S.C. §§ 119 and 120							
13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).							
a) ☐ All b) ☐ Some * c) ☐ None of:							
1. Certified copies of the priority documents have been received.							
2. Certified copies of the priority documents have been received in Application No							
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). * See the attached detailed Office action for a list of the certified copies not received.							
14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).							
a) ☐ The translation of the foreign language provisional application has been received. 15)⊠ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.							
Attachment(s)							
1) Notice of References Cited (PTO-892) 2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s)	5) Notice of Informal	ry (PTO-413) Paper No(s) Patent Application (PTO-152)					

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### **DETAILED ACTION**

#### Election/Restrictions

Applicant's election of Group II in Paper No. 4 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Applicant has elected, Group II, claims 12-16 and 30-41. Also in response to the election of species, solid dosage form and montelukast have been elected for examination.

### Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 30-41 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 30-41 are indefinite for depending on a canceled claim. Claims 1-7 have been canceled, yet claims 30-41 are depending on these claims.

# Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless -

(e) the invention was described in-

the treaty defined in section 351(a).

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under

Claims 12-16 and 30-31, 34 and 40-41 are rejected under 35 U.S.C. 102(e) as being anticipated by Jensen et al (WO 9932125).

Jensen teaches compositions for treating allergic rhinitis and other allergic diseases. The products of the 5-lipoxygenase pathway of arachidonic acid metabolism, particularly the leukotrienes, can mediate bronchoconstriction, mucus secretion, airway mucosal edema, chemotaxis and mobilization of cells into the airway in the inflammatory process of asthma. The composition comprises I) an effective amount of at least one leukotriene antagonist which is montelukast, pranlukast, zafirlukast etc, or a pharmaceutically acceptable salt thereof, and II) an effective amount of at least one antihistamine which is astemizole, norastemizole, cetrizine or a pharmaceutically acceptable salt thereof. The pharmaceutical composition is designed for oral administration. Optionally the composition can further comprise a third active ingredient which can be a decongestant (pages 1-2; claims 1-2, 7-8 and 11).

Jensen discloses that the amount of norastemizole in each dosage from can range from about 5 to 40 mg (page 5, lines 11-12). Also disclosed is that montelukast and norastemizole is one of the preferred combinations of a leukotriene antagonist and antihistamine (page 8, lines 4-8).

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Jensen teaches that the pharmaceutical compositions and methods, the forgoing active ingredients will typically be administered in admixture with suitable pharmaceutical diluents, excipients or carriers suitably selected with respect to the intended form of administration, i.e. oral tablets, capsules, powders, elixirs, syrups,

nasal sprays, solutions, oral drops and the like (page 9, lines 1-23).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mina Haghighatian whose telephone number is 703-

308-6330. The examiner can normally be reached on core office hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees can be reached on 703-308-4628. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-4242 for regular communications and 703-308-4242 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0198.

PRIMARY EXAMINER

Mina Haghighatian February 5, 2003